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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RODNEY CHARLES DUNSMORE,
STEVEN LEE HARRINGTON, and MARK CHRISTAN SPEICH

Appeal 2008-1039
Application 09/679,781
Technology Center 3600

Decided: June 12, 2008

Before WILLIAM F. PATE, III, LINDA E. HORNER, and
JOHN C. KERINS, *Administrative Patent Judges*.

HORNER, *Administrative Patent Judge*.

DECISION ON APPEAL

Rodney Charles Dunsmore et al. (Appellants) seek our review under 35 U.S.C. § 134 of the final rejection of claims 29-40 and 55-69, all of the pending claims. We have jurisdiction under 35 U.S.C. § 6(b) (2002). We reverse.

The Appellants' claimed invention relates to permitting restaurant patrons to individually pay their portion of the restaurant bill (Spec. 1: 4-5). Claim 29, reproduced below, is representative of the subject matter on appeal.

29. In a restaurant, a system comprising:
 - a waiter's terminal for inputting orders of food items ordered by a plurality of patrons at a table;
 - a first program code for computing a total amount owed by the plurality of patrons for the ordered food items;
 - a payment unit physically located at the table;
 - transmission circuitry for transmitting the total amount from the waiter's terminal to the payment unit;
 - a display screen on the payment unit for displaying the total amount to the plurality of patrons;
 - a credit card reader on the payment unit for receiving first credit card information from a first credit card swiped through the credit card reader by a first one of the plurality of patrons;
 - a numeric input pad on the payment unit for receiving a first portion entered by the first one of the plurality of patrons, wherein the first portion

represents an amount of money to be paid by the first one of the plurality of patrons by a debit to an account of the first credit card;

a second program code for automatically calculating a balance owed on the total amount, wherein the balance owed equals the total amount minus the first portion;

a third program code for automatically determining if the balance owed equals zero;

a fourth program code for automatically displaying the balance owed on the display screen;

the credit card reader receiving second credit card information from a second credit card swiped through the credit card reader by a second one of the plurality of patrons when the balance owed is greater than zero;

the numeric input pad receiving a second portion entered by the second one of the plurality of patrons, wherein the second portion represents an amount of money to be paid by the second one of the plurality of patrons by a debit to an account of the second credit card;

a fifth program code for automatically calculating a balance owed on the total amount, wherein the balance owed equals the total amount minus the first and second portions;

a sixth program code for automatically determining if the balance owed equals zero; and

a seventh program code for automatically displaying the balance owed on the display screen.

The Appellants seek our review of the Examiner's rejection of claims 29-40 and 55-69 under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent No. 4,530,067, issued July 16, 1985 to Dorr and U.S. Patent No. 5,933,812, issued August 3, 1999 to Meyer.

The issue before us is whether the Appellants have shown that the Examiner erred in rejecting claims 29-40 and 55-69 under 35 U.S.C. § 103(a) as unpatentable over Dorr and Meyer. This issue turns on whether the combined teachings of Dorr and Meyer would have led one having ordinary skill in the art to the invention as claimed.

“Section 103 forbids issuance of a patent when ‘the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.’” *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1734 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, (3) the level of skill in the art, and (4) where in evidence, so-called secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966). *See also KSR*, 127 S. Ct. at 1734 (“While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors continue to define the inquiry that controls.”)

In rejecting claims under 35 U.S.C. § 103(a), the examiner bears the initial burden of establishing a prima facie case of obviousness. *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992); *see also In re Piasecki*, 745 F.2d 1468, 1472 (Fed. Cir. 1984). Only if this initial burden is met does the burden of coming forward with evidence or argument shift to the appellant. *See Oetiker*, 977 F.2d at 1445; *see also Piasecki*, 745 F.2d at 1472. Obviousness is then determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. *Id.*

Independent claim 29 recites a waiter's terminal for inputting orders of food items, a payment unit physically located at the table, and transmission circuitry for transmitting a total amount from the waiter's terminal to the payment unit. Independent claim 55 similarly recites a payment unit comprising receiving circuitry for receiving from a waiter's terminal a total amount owed. Claims 29 and 55 also recite various program codes that allow patrons to split a check using a calculation of a running balance and pay for the separate checks at the table using the payment unit.

The Appellants contend that the combination of Dorr and Meyer fails to provide or suggest the calculation of a running balance, as recited in claims 29 and 55 (App. Br. 12-16). We agree with the Appellants.

Dorr relates to managing and controlling information in a restaurant using remote units capable of being carried by waiters (Dorr, col. 2, ll. 32-35). Each remote unit communicates with a central processor (Dorr, col. 2, ll. 36-39; Fig. 1). The central processor is connected to a check

printer-cash register unit, which types a bill or check for the customer (Dorr, col. 2, ll. 45-52). Dorr discloses that when the customers have completed their meal, the central processor generates information to the check printer-cash register unit, which types a total bill (Dorr, col. 6, ll. 3-8). The printed check or bill is then delivered to the customer for payment (Dorr, col. 6, ll. 9-10). Dorr further describes allowing the waiter to split the check if the customers wish to have separate checks (Dorr, col. 15, ll. 29-44). In this example, however, Dorr requires the waiter to input the information to split the total bill into separate checks, and the check printer-cash register unit then prints separate checks for the customers (Dorr, col. 15, ll. 29-44). Although Dorr describes that a customer's credit card number can be input for printing on the bill (Dorr, col. 15, ll. 19-21 and 40-42), Dorr does not disclose the second, third, fourth, fifth, sixth, or seventh program codes of claim 29 or the first through sixth program codes of claim 55, which allow customers to split the check and pay for the bill via a unit available at the customers' table.

Meyer discloses portable transaction data entry terminals adapted for use in restaurants that allow customers to pay for the amount of the guest check at the table using a credit or debit card (Meyer, col. 1, ll. 16-19 and col. 3, ll. 27-32). Meyer discloses that the portable terminal is carried in the server's apron pocket (Meyer, col. 4, ll. 11-15) and that the server carries the unit to the guest's table along with the guest check showing the amount of the guest charge and if the guest wishes to pay by credit card, the server

enters the guest charge amount and hands the terminal to the guest to swipe his card and authorize the charge (Meyer, col. 7, ll. 37 – col. 9, l. 47). Meyer does not describe any algorithm to split the amount owed and allow customers to pay separate guest checks at a table.

Although the general concept of splitting a check is known in the art, we fail to see why one having ordinary skill in the art would have been led to modify the remote waiter terminal of Dorr with a program to allow the patrons to split the check in the particular manner claimed absent hindsight. The Examiner's reliance on the general knowledge in the accounting arts is insufficient to show that one of ordinary skill in the art would have been led to the particular algorithm of claims 29 and 55.

Further, even if one were to modify the portable waiter's terminal of Dorr to add a payment option, as taught in Meyer, and to add the algorithm as claimed, the resulting terminal would still not render the claimed invention obvious because the resulting terminal would operate as both the waiter's terminal, i.e., allowing the waiter to enter the order information, and the payment unit. The claims, however, recite that the waiter's terminal is connected to the payment unit such that information can be transmitted from the waiter's terminal to the payment unit. This necessarily requires that the waiter's terminal is separate from the payment unit. Thus, the Examiner's proposed modification to Dorr to add payment functionality to the portable waiter's terminal of Dorr still does not present a prima facie case of obviousness of the invention of claims 29 and 55. For these reasons, we do

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not sustain the rejection of claims 29 and 55 or their dependent claims 30-40 and 56-69.

CONCLUSIONS

The Appellants have shown that the Examiner erred in rejecting claims 29-40 and 55-69 under 35 U.S.C. § 103(a) as unpatentable over Dorr and Meyer.

DECISION

The decision of the Examiner to reject claims 29-40 and 55-69 is reversed.

REVERSED

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